IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No. 604 of 2005
In
SPECIAL CIVIL APPLICATION No. 7430 of 2004

For Approval and Signature:

HONOURABLE MR.JUSTICE B.J.SHETHNA
HONOURABLE MR.JUSTICE M.C.PATEL

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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M.JAGDAMBA DYEING & PRINTING & 1 - Appellant(s)

Versus

RAMKUMAR RAMCHAL MISHRA C/O.SURAT SILK LABOUR UNION - Respondent(s)

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Appearance :
MR SJ GAEKWAD for Appellant(s) : 1 - 2.
MR KR KOSHTI for Respondent(s) : 1,
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CORAM : HONOURABLE MR.JUSTICE B.J.SHETHNA
and
HONOURABLE MR.JUSTICE M.C.PATEL

Date : 22/09/2005

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE B.J.SHETHNA)

1. The appellants have challenged, in this Appeal, the Judgment and order dated 1.12.2004, passed by the learned Single Judge (Coram : Akil Kureshi, J.) in Special Civil Application No.7430 of 2004 whereby the learned Single Judge allowed the writ petition i.e. Special Civil Application No.7430 of 2004 filed by the respondent – workman and quashed and set aside the impugned orders dated 22.5.2003 and 5.4.2004 (Annexure : C) passed by the Labour Court.

2. The respondent – workman was working as Bleaching Machine man in the Dyeing Department of the appellant – Company with effect from 1.1.1995 on a monthly salary of Rs.2210/-. But, the respondent was not given his Card, salary slip, etc. When demanded the appellants terminated his service by oral termination order dated 6.7.1991 without following the provision of law. Though, the workman wrote a letter dated 2.8.1997 to take him back in service he was not taken in service by the appellant. He, therefore, filed T. Application No.712 of 1997 on 3.10.1997 before the Labour Court. Summonses issued in it were duly served on the present appellants – employer. Though served, the appellants did not bother to personally remain present before the Labour Court. Thereafter, after waiting for a period of almost 3 years by an order dated 15.4.2001 the Labour

Court set aside the termination order of the workman and ordered the appellants to reinstate the workman in service with full back wages. **It is required to be stated that this order of reinstatement in service with full back wages, passed by the Labour Court, was never challenged by the appellants – employer and thereby it has become final.** In spite of the order of reinstatement passed by the Labour court in favour of the workman the appellants – employer failed to comply with the same, therefore, the workman had no alternative but to approach the Labour court by way of Recovery Application and accordingly he approached the Labour Court, Surat by way of Recovery Application No.474 of 2000. Summonses issued in that Recovery Application were duly served on the appellants – employer. But, though duly served he did not remain present before the Labour Court, therefore, by an order dated 16.4.2001 (Annexure : B) the Labour Court allowed that Recovery Application and directed the employer to pay the total amount of Rs.77,850/- towards the arrears of salary with cost of Rs.500/-. The employer was already in know of this ex-parte order which is clear from the order dated 22.5.2005 passed by the Labour Court, Surat itself in Application No.9 of 2003 as, after passing of the impugned order dated 16.4.2001,

the Labour Court passed an order dated 30.6.2001 to the Collector to issue Recovery Certificate. It is also clear from the order dated 22.5.2003, passed by the Labour Court, Surat (Annexure : C) that the employer was in know of the order. Not only that, he had also taken copy of Recovery Certificate which was ordered to be issued in view of the order passed in Recovery Case. It is also to be noted that the impugned order of recovery passed on 16.4.2001 (Annexure : I) was in fact complied with by the employer by paying Cheque of Rs.78,350/- on 10.2.2003, during the recovery proceeding. It is a serious matter that the said cheque was bounced. It is also clear from the order dated 5.4.2004, passed in Application No.9 of 2003, that on the basis of Recovery Certificate, Notices were issued by the office of the Collector in Recovery proceeding which were duly received by the employer. Thus, it is absolutely clear that the appellants were in know of the impugned recovery order dated 16.4.2001 (Annexure : B) passed by the Labour Court since long.

3. However, by suppressing all these material facts, on 10.2.2003, after a period of almost 2 years of passing of the the impugned recovery order dated 16.4.2001, the employer filed Application No.9 of 2003 for setting aside the so called ex-parte order dated 16.4.2001

(Annexure : B) wherein Application ex.3 was filed for condoning the delay by making false statement in it that he had received the copy of impugned recovery Application dated 16.4.2001, passed by the Labour Court only on 6.2.2003 and within 4 days from the date of receipt of the order i.e on 10.2.2003 he had filed Application for setting aside the ex-parte order, wherein false excuse was given that his Attorney Shri Mehta, who was looking after his work since last 20 to 22 years, failed to remain present before the Labour Court and not properly presented their case. Therefore, ex-parte order came to be passed and copy of the said order could not be received within time. Hence, delay. The said Application for condonation of delay was vehemently objected by the workman by submitting that the employer was fully in know of the proceedings and the order. In spite of it deliberately, after a period of almost 2 years, the Application for condonation of delay was filed after passing of the ex-parte recovery order by the Labour Court. In spite of this, surprisingly, the Labour Court condoned the delay Application Ex.3 by its impugned order dated 22.5.2003 (Annexure : C), though the Labour Court itself stated in Para : 4 of its impugned order dated it cannot be said that the Applicant – employer was not

in know of the proceeding and the ex-parte order as he had also applied for copies of recovery order passed by the Labour Court.

4. The Labour Court then observed that due to the negligence of the Advocate of the employer, who did not care to remain present before the Court, therefore, ex-parte order was passed and because of the negligence of the Advocate the party cannot be made to suffer and relying on the Judgment of the Bombay High Court in the case of STATE OF MAHARASHTRA v/s. S.G.SAIYED, reported in 2003 LLJ 491 the Labour Court condoned the delay and allowed the Application. More shocking feature of the case is that while condoning the delay the Labour court also observed that such a gross delay has occurred because of the negligence of the employer as well.

   In our considered opinion once, the Labour court comes to the conclusion that there was negligence on the part of the employer and that he was in know of the ex-parte proceedings and the order, then there was no question of condoning delay in filing the Recovery Application.

5. Having condoned the delay the Labour Court by its impugned order dated 5.4.2004 allowed the Application No.9 of 2003 for setting aside the ex-parte order dated 16.4.2001 passed in Recovery Application No.474 of 2000, and restored the Recovery Application No.474 of

2000 at its original number and kept the hearing of the same on 29.4.2004.

6. The aforesaid impugned orders dated 22.5.2003, passed below ex.3 for condonation of delay in Recovery Application No.9 of 2003 (Annexure : C) and order dated 5.4.2004 passed in Application No.9 of 2003 were challenged by the respondent workman before this Court by way of Writ petition i.e. Special Civil Application No.7430 of 2004, which was allowed by the learned Single Judge (Akil Kureshi, J.) by his Judgment and order dated 1.12.2004 and the same have been quashed and set aside and the present appellants were granted 4 months time to pay the amount initially awarded by the Labour Court to the workman by its order dated 16.4.2001. It is challenged in this Appeal.

7. Learned Counsel Shri Gaekwad for the appellants submitted that the Labour Court had the jurisdiction to set aside its own ex-parte order on being satisfied with the explanation offered by the appellants. When the Labour Court exercised its jurisdiction in favour of the appellants – employer and quashed and set aside its impugned ex-parte recovery order on the ground of the negligence of the Advocate then it was not open to the learned single Judge of this Court to interfere with such a discretionary order passed by the Labour

Court in his writ jurisdiction under Art.226 of the Constitution. He also submitted that while setting aside the ex-parte order passed by the Labour Court and restoring the main Recovery Application to the file at its original number for re-hearing of the case the Labour Court awarded cost of Rs.2500/- to the respondent – workman which was also deposited by the appellant – employer. Thus, substantial justice was done by the Labour court to the workman, therefore, learned Single Judge ought not to have interfered with such discretionary orders in his writ jurisdiction. Shri Gaekwad further submitted that if the Judgment and order passed by the learned Single Judge, allowing the writ petition filed by the respondent – workman is quashed and set aside and the impugned orders passed by the Labour Court is restored to the file, then the appellant – employer will fully co-operate in recovery proceeding before the Labour court.

8. On the point of jurisdiction exercised by the learned Single Judge under Art.226 of the Constitution, Shri Gaekwad has placed reliance on the following Judgments of the Hon'ble Supreme Court :

i) 1952 SCR 583

ii) 1952 SCR 689

iii) AIR 1964 SC 477, and

iv) 2003 (6) SCC 675

9. In ordinary circumstances, under Article 226 this Court would not like to interfere with such discretionary orders passed by the Labour Court in setting aside its own ex-parte order. But, the facts of this case are so glaring that the learned Single Judge of this Court was more than convince about the discretionary jurisdiction wrongly exercised by the Labour Court in favour of the Employer, therefore, he interfered with the impugned orders passed by the Labour Court as-

i)The respondent – workman was working as Bleaching Machine Man in the Dyeing Department of the appellants since 1.1.1995 on a monthly salary of Rs.2210/-, but he was not provided his presence Card, Photo Card, etc. and other benefits available to him under the law were also not given to him. Therefore, when he asked, without following the provision of law, his services were terminated by an oral order dated 6.7.1997. Though the workman made written request on 2.8.1997 to take him back in service the same was not even considered. Therefore, he had to file T. Application No.712 of 1997 before the Labour Court. The employer, though served with the Notice, neither remained present nor filed any reply. Therefore, on 15.4.2000, after waiting for a period of almost 3 years the Labour Court passed an

order directing the employer to take back the workman in service with back wages within 30 days, awarding cost of Rs.500/-. This ex-parte order of reinstatement was not challenged by the appellant – employer. Thus, it has become final.

ii)The order of reinstatement in service with back wages, passed by the Labour Court on 15.4.2000 was complied by the Employer, therefore, the workman once again approached the Labour Court by way of Recovery Application No.474 of 2000. There again the appellants were served but remained absent. Therefore, by an order dated 16.4.2001 the Labour Court allowed the said Application and ordered the appellants to pay Rs.77,850/- within 30 days from the date of receipt of the Judgment.

iii)After the Recovery application No.474 of 2000 was allowed by the Labour Court on 16.4.2001 the Labour Court issued an order dated 30.6.2001 to the Collector for issuing Recovery Certificate. It is clear from Annexure : D to the main writ petition that the Recovery Certificate was issued on 20.7.2001 and the City Mamlatdar, Surat, issued summons dated 23.10.2001, which was accepted by Shri Suresh Shah, present appellant No.2 on behalf of the appellants. Another summons was served on 22.2.2002 for recovery of money.

One more summons was issued which was signed and received by Shri Sureshbhai Shah and Shri Nareshbhai Shah. Thereafter, on 17.8.2002 one more summons was issued by the City Mamlatdar for recovery of money. Thereafter, the City Mamlatdar passed an order of attachment of property of the present appellants which was also duly served and signed by Shri Sureshbhai Shah. **The statement of Shri Sureshbhai Shah was recorded on 30.9.2002 by the City Mamlatdar, Surat with the order of attachment passed by the City Mamlatdar.** Thereafter, on 17.2.2003 the Advocate of the Appellants addressed a letter to the City Mamlatdar, Surat for staying the recovery proceeding.

iv) On 10.2.2003, in compliance with the order passed by the Labour Court, the appellants gave the cheque of Rs.78,350/- and on that very day i.e on 10.2.2003 they approached the Labour Court for setting aside the ex-parte order with an Application for condonation of delay, but the said cheque bounced back.

9. From the facts narrated herein above it is more than clear that the appellants were very much in know of the impugned ex-parte recovery order dated 16.4.2001 (Annexure : B) passed by the Labour court since long. In spite of it they deliberately waited almost for a period of 2 years and when they compelled to pay then

after paying the ceque of Rs.78,350/- on 10.2.2003, on the same day, they approached the Labour Court for setting aside the ex-parte order with an application for condonation of delay by making an averment that they came to know about the order dated 16.4.2001. But, their cheque was dishonoured. In spite of the aforesaid voluminous record against the appellants the Labour court, at first instance, condoned the delay only on the ground that the appellant cannot be made to suffer because of the fault or negligence on the part of the lawyer. Though the Labour Court itself found in its Judgment that the appellants were very much in know of the ex-parte order passed by the Labour Court and that they had taken the certified copy of the Recovery Certificate. In our considered opinion after recording this findings the Labour Court ought not to have condoned the delay by its impugned order dated 22.5.2003. By condoning the gross delay of almost 2 years the Labour Court had committed jurisdictional error. Therefore, in our considered opinion the learned Single Judge was absolutely right and justified in exercising his extra-ordinary writ jurisdiction under Art.226 of the Constitution in favour of the workman as there was gross miscarriage of justice.

10.Once we come to the conclusion that the Labour Court

erred in condoning the delay in filing Application for setting aside the ex-parte order then there was no need for us to go to the subsequent order dated 5.4.2004 passed by the Labour Court on main Application for setting aside the ex-parte order as it would not survive any more. However, in the interest of justice, we have also considered the said order also as the same was also quashed and set aside by the learned Single Judge.

11. In the instant case the Labour Court was absolutely wrong in holding that because of the mistake of the Advocate the proceeding continued ex-parte and the order was passed. In fact, except the bare word of the appellants that their Advocate failed to discharge his duty there was no material on record available to support their say. In fact the Labour Court ought to have appreciated the past conduct of the appellants of not remaining present before the Labour Court though duly served when the termination order was challenged by the workman and later on in a Recovery Application. As stated earlier, from Annexure : D, it is clear that the appellants were very much aware about the ex-parte proceeding and the order way back in 2001 itself. In spite of the fact that repeated summons being served upon the appellants they did not comply with the order

passed by the Labour Court on 16.4.2001. When they were compelled, then only they gave cheque of Rs.78,350/-, which was also dishonoured and on that very day i.e. On 10.2.2003 they approached Labour Court and filed an Application for setting aside the ex-parte order along with condonation of delay by making false averments in it. Thus, it is clear that the appellants had malafide intention through-out. All these material facts of the case were completely ignored by the Labour Court while allowing the restoration Application by its impugned order dated 5.4.2004, therefore, there was no option for the learned Single Judge but to interfere with the same in his discretionary jurisdiction under Art.226 of the Constitution as there was jurisdictional error committed by the Labour Court while passing the impugned order dated 5.4.2004. If the learned Single Judge had not interfered with such order, then there would have been gross miscarriage of justice. When there is gross miscarriage of justice caused by the Labour Court while passing the impugned order, then the learned Single Judge was absolutely justified in setting aside the orders in his extra-ordinary jurisdiction under Art.226 of the Constitution.

12. The last submission made by Shri Gaekwad was that while allowing the restoration Application and setting

aside the ex-parte order the Labour Court has awarded cost of Rs.2500/- in favour of respondent – workman and thereby he had done substantial justice, is absolutely without any substance. It may be stated that when the respondent – workman had asked for his legal dues and legal rights then within a period of 2-1/2 years his services were unceremoniously terminated by an oral order dated 6.7.1997. Before approaching the Labour Court he made request to the appellants which fell on the deaf ears and, therefore, at last he filed T. Application No.712 of 1997. Though summonses were duly served to the appellants they simply did not care and failed to remain present and allowed the ex-parte Award to be passed by the Labour Court on 15.4.2004 even though the order of reinstatement in service with back wages was simply ignored by the appellants. Therefore, the workman was compelled to once again approach the Labour Court by way of Recovery Application No.474 of 2000. Again there also the appellants shown scant regards to the Court and preferred to remain absent and allowed the ex-parte recovery order of Rs.77,850/- to be passed by the Labour Court on 16.4.2001. Though the Recovery Certificate was issued and repeated summonses were served to the appellants from October, 2001 to

September, 2002, they did not even complied with the recovery order passed by the Labour Court and under the false pretext that their Advocate did not tell them to approach the Labour Court and after a period of almost two years they succeeded by paying cost of Rs.2500/- to the respondent – workman. That is not the real justice. The poor respondent – workman made to suffer for all these years because of the dirty tricks played by the appellants. Even today, after the learned Single Judge allowed the writ petition on 1.12.2004, the appellants have not so far complied with the earlier recovery order dated 16.4.2001 (Annexure : B to the petition) passed by the Labour Court which is restored to the file by the learned Single Judge while setting aside the subsequent orders dated 22.5.2003 (Annexure : C) and 5.4.2004 passed by the Labour Court.

13. In view of the peculiar facts of this case, when we have come to the conclusion that the learned Single Judge was absolutely justified in exercising his extra-ordinary jurisdiction under Art.226 in favour of the respondent – workman by allowing the writ petition and setting aside the impugned orders dtd. 22.5.2003 and 5.4.2004 passed by the Labour Court then there is no need for us to refer and deal with the Judgments of the Hon'ble Supreme Court, cited by Shri Gaekwad, as in our

considered opinion, none of the aforesaid Supreme Court Judgments will have any application, on peculiar facts of this case.

14. In view of the above, this Appeal is dismissed. When we have dismissed the Appeal then, in ordinary circumstances, we would have awarded exemplary cost not less than Rs.10,000/- as this Appeal was absolutely frivolous, but we have refrained ourselves from passing such order of costs in view of the statement made by Shri Gaekwad for the appellants that now the appellants will comply with the order dated 15.4.2000 (Annexure : A) passed by the Labour Court and will pay the entire dues to the respondent – workman on or before 31.12.2005. Accordingly, this Appeal is dismissed.

(B.J.SHETHNA,J.)

(M.C.PATEL, J.)

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